



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2023-0058; FRL-10634-01-R5]

**Air Plan Approval; Michigan; Clean Data Determination for the
Detroit Area for the 2015 Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine under the Clean Air Act (CAA) that the Detroit, Michigan nonattainment area (hereafter also referred to, respectively, as the "Detroit area" or "area") has attained the 2015 ozone National Ambient Air Quality Standards (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2020-2022 design period showing that the area achieved attainment of the 2015 ozone NAAQS. EPA also proposes to take final agency action on an exceptional events request submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on January 26, 2023, and concurred on by EPA on January 30, 2023. As a result of these determinations, EPA is proposing to suspend the requirements for the area to submit attainment demonstrations and associated Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures for failure to attain or make reasonable progress, and other planning State Implementation Plans (SIPs)

related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS. This action does not constitute a redesignation of the area to attainment of the 2015 ozone NAAQS, and the area remains designated nonattainment until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2023-0058 at <http://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background.

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section

107(d) (1) (B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. On August 3, 2018, EPA designated the Detroit area, consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, as a Marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776). On January 26, 2023, the Regional Administrator of EPA Region 5 signed a final rulemaking determining, based on 2018-2020 monitoring data, that the Detroit area had failed to attain by its Marginal attainment date of August 3, 2021, and reclassifying the area to Moderate.¹

II. Exceptional Events Demonstration.

Congress has recognized that it may not be appropriate for EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in EPA's Air Quality System (AQS) database in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by "exceptional events" meeting specific criteria by adding section 319(b) to the CAA.²

¹ EPA previously proposed to approve a January 3, 2022, request by EGLE to redesignate the Detroit area to attainment of the 2015 ozone NAAQS based on 2019-2021 monitoring data showing attainment of the 2015 ozone NAAQS (87 FR 14210). EPA's proposed approval was published on March 14, 2022, and the comment period closed on April 27, 2022. In this proposed action, EPA is not taking further action to finalize the proposed redesignation. EPA will respond to comments received during the comment period for the proposed redesignation should EPA take final action on EGLE's January 3, 2022, request.

² Under CAA section 319(b), an exceptional event means an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by EPA under the process established in regulations promulgated by EPA in accordance with section 319(b) (2) to be an exceptional event. For the purposes of section 319(b), an exceptional event does not include (i) stagnation of air masses or

To implement this 2005 CAA amendment, on March 22, 2007, EPA promulgated the 2007 Exceptional Events Rule (72 FR 13560). The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (§§ 50.1, 50.14, and 51.930). These regulatory sections, which superseded EPA's previous guidance on handling data influenced by events, contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for EPA's approval of the exclusion of event-affected air quality data from the data set used for regulatory decisions, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. On October 3, 2016, EPA promulgated a comprehensive revision to the 2007 Exceptional Events Rule (81 FR 68216). The 2016 Exceptional Events Rule revision included the requirement that, if a state demonstrates that emissions from a wildfire smoke event caused a specific air pollution concentration in excess of the NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of 40 CFR 50.14, EPA must exclude that data from use in determinations of exceedances and violations.³

The CAA provides for the exclusion of air quality monitoring data from design value calculations when there are NAAQS exceedances caused by events, such as wildfires, that meet

meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance.

³ 40 CFR 50.14(b) (4).

the criteria for an exceptional event identified in EPA's Exceptional Events Rule at 40 CFR 50.1, 50.14, and 51.930. For the purposes of this proposed action, on January 26, 2023, EGLE submitted an exceptional events demonstration to show that ozone concentrations recorded at the Wayne County monitor at East 7 Mile with Site ID 26-163-0019 on June 24 and 25, 2022, were influenced by wildfires. EPA concurred on this request on January 30, 2023.

EPA found that Michigan's demonstration met the Exceptional Events Rule criteria and determined that these wildfire events had regulatory significance for purposes of calculating the area's most recent design value to demonstrate the area is attaining the standard in order to make a clean data determination for the 2015 ozone NAAQS. As such, EPA proposes to take final regulatory action on the concurred dates, as detailed in the docket, as exceptional events to be removed from the data set used for regulatory purposes. For this proposed action, EPA will rely on the calculated values that exclude the event-influenced data for the purpose of demonstrating attainment of the 2015 ozone NAAQS. Further details on Michigan's analyses and EPA's concurrence can be found in the docket for this regulatory action.

While EPA has concurred with Michigan's request to exclude event-influenced air quality monitoring data from regulatory decisions, these regulatory actions require EPA to provide an opportunity for public comment on the claimed exceptional events

and all supporting data prior to EPA taking final agency action. This proposed action provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents and EPA's concurrence with Michigan's request.

III. Clean Data Determination.

Following enactment of the CAA Amendments of 1990, EPA discussed its interpretation of the requirements for implementing the NAAQS in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (General Preamble), 57 FR 13498, 13564 (April 16, 1992). On November 29, 1995, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS (70 FR 71612). Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, such as the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the ozone NAAQS, to be suspended for as long as air quality continues to meet the standard. Such a determination of attainment under the Clean Data Policy is known informally as a clean data determination. On December 6, 2018, in the final rule updating implementing regulations for the 2015 ozone NAAQS, EPA codified this policy at 40 CFR 51.1318 (83 FR 62998).

An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2015 ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in AQS. Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons⁴, on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from EGLE's monitoring sites in the Detroit area for the 2020-2022 period. These data have been quality assured, are recorded in the AQS, and were certified in advance of EPA's publication of this proposal. These data demonstrate that the Detroit area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for all

⁴ The ozone season is defined by state in 40 CFR part 58, appendix D. The ozone season for Michigan is March-October. See 80 FR 65292, 65466-67 (October 26, 2015).

monitoring sites are summarized in Table 1.

Table 1. Annual fourth-highest daily maximum 8-hour ozone concentrations and 3-year average of the fourth-highest daily maximum 8-hour ozone concentrations for the Detroit area.

County	Monitor	2020 4 th high (ppm)	2021 4 th high (ppm)	2022 4 th high (ppm)	2020-2022 average (ppm)
Macomb	26-099-0009	0.074	0.068	0.066	0.069
	26-099-1003	0.070	0.067	0.068	0.068
Oakland	26-125-0001	0.074	0.068	0.065	0.069
St. Clair	26-147-0005	0.069	0.072	0.066	0.069
Washtenaw	26-161-0008	0.072	0.066	0.067	0.068
	26-161-9991	0.067	0.063	0.066	0.065
Wayne	26-163-0001	0.070	0.069	0.071	0.070
	26-163-0019	0.073	0.069	0.067	0.069

The Detroit area's 3-year ozone design value for 2020-2022 is 0.070 ppm,⁵ which meets the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to find that the Detroit area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the Detroit area is attaining the NAAQS if the design value of a monitoring site in the area violates the NAAQS prior to final approval of the clean data determination.

Should this action be finalized, the requirements for EGLE to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS for the proposed Detroit area, would be suspended for as long as the area continues to attain the 2015 ozone NAAQS. 40 CFR 51.1318. This action does not constitute a redesignation of the area to attainment of the 2015 ozone NAAQS under section 107(d)(3)(E) of the CAA, nor does

⁵ The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

it constitute approval of a maintenance plan for the area as required under section 175A of the CAA, nor does it find that the area has met all other requirements for redesignation. The Detroit area will remain designated nonattainment for the 2015 ozone NAAQS until such time as EPA determines that the area meets CAA requirements for redesignation to attainment and takes a separate action to redesignate the area.

IV. What Action is EPA Taking?

EPA is proposing to approve a determination under the CAA that the Detroit area has attained the 2015 ozone NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2020-2022 design period showing that the area achieved attainment of the 2015 ozone NAAQS. EPA is also proposing to take final agency action on an exceptional events request submitted by EGLE on January 26, 2023, and concurred on by EPA on January 30, 2023. As a result of these determinations, EPA is proposing to suspend the requirements for the area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS.

V. Statutory and Executive Order Reviews.

This action proposes to make a clean data determination for the Detroit area for the 2015 ozone NAAQS based on air quality data which would result in the suspension of certain Federal

requirements and does not impose any additional requirements.

For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 30, 2023.

Debra Shore,
Regional Administrator, Region 5.

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